

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-v-	:
	:
EDGAR ENCARNACION LAFONTAINE,	:
	:
Defendant.	:
	:
-----x	

13 Cr. 30 (JSR)

ORDER ON MOTION FOR  
SENTENCE REDUCTION

JED S. RAKOFF, U.S.D.J.

Before the Court is a motion for sentence reduction under 18 U.S.C. § 3582(c)(1)(A), filed in the name of Edgar Encarnacion Lafontaine by his sister, Niurka Encarnacion Lafontaine. ECF No. 195.

On December 11, 2014, Encarnacion Lafontaine was convicted of conspiring to distribute at least 100 kilograms of marijuana, conspiring to distribute at least five kilograms of cocaine, conspiring to commit extortion, a substantive extortion offense, and conspiring to commit witness tampering. This Court denied Encarnacion Lafontaine's motion for a judgment of acquittal, ECF No. 183, and sentenced him to a total of 180 months' imprisonment and five years' supervised release. ECF No. 187. Encarnacion Lafontaine filed a direct appeal, which the Second Circuit denied. See United States v. Encarnacion-Lafontaine, 639 F. App'x 710, 715 (2d Cir. 2016). He subsequently filed a pro se petition for resentencing pursuant to 28 U.S.C. § 2255, ECF No. 193, which remains sub judice.

The present motion, in contrast, is not brought by Encarnacion Lafontaine. It has been prepared, signed, and submitted by his sister, Niurka Encarnacion Lafontaine, who has enclosed a signed general power of attorney form indicating that Encarnacion Lafontaine has authorized her to act on his behalf in various matters. ECF No. 195 at 20-26.

While the Court finds commendable Ms. Encarnacion Lafontaine's desire to advocate on her brother's behalf, the law is clear that "a person ordinarily may not appear pro se in the cause of another person or entity," even where "the person bringing the action on behalf of another person has power of attorney." Rumph v. City of New York, 2019 WL 1900335, \*1 (S.D.N.Y. 2019) (quoting Pridgen v. Andresen, 113 F.3d 391, 393 (2d Cir. 1997)). Because Ms. Encarnacion Lafontaine has not alleged that she is an attorney, she cannot represent Encarnacion Lafontaine.

The Court also notes receipt of a letter from Encarnacion Lafontaine, dated July 23, 2021, in which he states that he wishes to "voluntarily remove" his "[c]ompassionate release motion with right to reinstate at a later date." ECF No. 197. Encarnacion Lafontaine states that he intends to seek legal assistance to file the motion.

The Court dismisses without prejudice the motion for sentence reduction, declining to reach the Government's substantive arguments concerning the motion. The Court notes that Encarnacion Lafontaine may renew the motion either pro se or by counsel as may be available to him under the Sixth Amendment, see Mempa v. Rhay, 389 U.S. 128, 135 (1967), or the Criminal Justice Act, 18 U.S.C. § 3006A(c).

The Court directs the Clerk of Court to mail a copy of this order to Edgar Encarnacion Lafontaine and Niurka Encarnacion Lafontaine and to note service on the docket.

SO ORDERED.

Dated: New York, NY

July 28, 2021

A handwritten signature in dark ink, appearing to read "JED S. RAKOFF", is written over a horizontal line.

JED S. RAKOFF, U.S.D.J.